IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 154 OF 2003

Dr. Charles Pinto alias
Dr. Carlos A.G.Pinto,
retired Medical Officer,
Directorate of Health
Services, St. Cruz,
Ilhas, Goa. ... Petitioner.

versus

1. State of Goa through
   the Health Secretary,
   Government of Goa,
   Secretariat, Panaji, Goa.

2. Director of Health Services,
   Directorate of Health Services,
   Panaji, Goa. ... Respondents.

Mr. R. G. Ramani, Advocate for the Petitioner.

Mrs. Winnie Coutinho, Government Advocate for the Respondents.

CORAM: F. I. REBELLO &
P. V. HARDAS,JJ.

DATED: 10TH JUNE, 2003.

ORAL JUDGMENT(PER F. I. REBELLO, J.)

Rule.

Respondents waive service. Heard forthwith.

2. The Petitioner was in service of the first Respondent. At the time when he sought retirement which was accepted on 25th January, 1998, he had to his credit 200 days of Privilege Leave. The Petitioner on 25th September, 1998, had applied for regularisation of leave as can be seen from letter dated 25th January, 1998. The application was duly accompanied amongst others by Medical Certificates. The Petitioner's application for voluntary retirement was accepted by an Order issued on 14th May, 1998 but effective from 25th April, 1998. The leave was regularised for the period from 11th December, 1997 to 24th April, 1998 on 12th June, 1998. The further absence from 22nd November, 1997 to 25th November, 1997 was regularised on 23rd February, 1999. It is only after this that the Petitioner was in a position to submit his claims which he did by application of 25th March, 1999. The Petitioner was paid his benefits on 7th January, 2000.

3. By the present Petition, the Petitioner prays that he be granted interest for the delayed payment. The various claims have been included at the time of hearing. The claim for interest is on the amount received towards Gratuity and G.P.F..

On behalf of the Respondents, a reply has been filed by Dr. Arvind Salelkar. The sum and substance of

the averments in the Affidavit are that after the Petitioner submitted his bills on 25th March, 1999 in so far as G.P.F. is concerned, it has been paid within 6 months and accordingly no interest is payable. It is contended that the amount towards G.P.F. was paid at the earliest after the Petitioner submitted his papers and the leave was regularised. In these circumstances, it is contended that no interest will be payable.

4. The Petitioner herein had applied for regularisation of his leave much before his voluntary retirement was accepted by letter of 14th May, 1998, with effect from 4th April, 1998. The Petitioner at the relevant time had 200 days of Privilege Leave at his credit. The very fact that the Petitioner was allowed to go on voluntary retirement would indicate that there was nothing adverse against the Petitioner. Apart from that, the Petitioner had already applied on 14th May, 1998. It was, therefore, incumbent, on the Respondents before accepting the Petitioner's application for V.R.S. to have first considered and regularised the leave. The Petitioner is not to be blamed, if the Respondents default in their duty. All that the Petitioner had to do was to apply by supporting documents, which the Petitioner did. In that context, merely because the leave was thereafter regularised by letter of 16th June,

1998 and 23rd February, 1999, at least the Petitioner cannot be faulted.

The contention that the Petitioner applied only on 25th March, 1999, has to be considered with reference to the above context namely that the Petitioner could not have submitted his papers for his legal dues without getting the formalities complied. Compliance of formalities was not in his hands but in the hands of others who kept the same pending and did not decide in time even when the Petitioner had leave to his credit. It is in this context that we should consider whether the Petitioner would be entitled to interest on Gratuity and the G.P.F. dues.

5. In so far as Gratuity is concerned under Rule 68, Note 2 of Swamy's - CCS(Pension) Rules, Compilation and Central Civil Service(Pension) Rules under Rule 68 Note 2 is a decision of the Government of India. In cases other than superannuation where the payment of Gratuity is delayed beyond six months from the date of retirement and not for any fault of the employee, interest should be paid for the period of delay beyond six months from the date of retirement. In the instant case, as already pointed out, Petitioner retired w.e.f. 25th April, 1998. The Respondent, therefore, had time upto six months to make the payments. The

regularisation formalities were completed on 23rd February, 1998. This clearly would be an administrative lapse on the part of the Respondents and not a fault on the part of the Petitioner. Once, that be the case clearly the note would apply to the Petitioner's case and the Petitioner would be entitled to interest on the amount of Gratuity. The interest payable is at the rate of 9%. This is set out on a statement made on behalf of the Respondents by learned Government Advocate on taking instructions. Interest payable to the Petitioner on the Gratuity amount will be from 25th April, 1998 till payment was made.

6. The next issue is whether the Petitioner is entitled for interest on G.P.F.. Under the Rules framed for payment of G.P.F. most specifically Rule 11(4) of which the main part reads as under:-

In addition to Rule 31, 32 and 33, interest thereon would be payable upto the end of the month preceding in which payment is made or upto the end of six months after the month in which such amount becomes payable whichever of these periods is less. The Note to this Rule set out that payment of interest beyond the period of six months may be authorised by the Head of Accounts Office for a period of one year and the immediate superior to the Head of Accounts Office upto

any period. It is the contention of the Respondents that the Petitioner applied only on 23rd February, 1999 and thereafter that payment was made on 7th January, 2000. The amount lying with the Respondents would be fetching interest as interest is paid every year on the G.P.F. Account and credited to the Account of each respective person who is contributory to the fund. As pointed out earlier while discussing the issue of interest on Gratuity, the Petitioner was not at fault. The Petitioner had taken all steps. It was within the discretion of the Respondents to make payment of interest. We see no reasons on the facts of this case as to why the Petitioner should be denied interest. On the facts of record the Petitioner was not responsible for the delay and apart from that as the G.P.F. itself would be carrying interest and it was within the discretion of the Respondent to make payment. The amount on interest as per the statement made on behalf of the State Government is 9%. That amount on G.P.F. would carry interest at 9% from the date of retirement i.e. 25th April, 1998 till payment of G.P.F. amount.

7. We must express our anguish as to why in these matters when employees put service with the Respondent, at the time of retirement they should not be paid their terminal benefits immediately. Most pensioners depend

ultimately on their livelihood on the pensionary benefits.

8. In the light of that, we direct that interest at 9% on G.P.F. and Gratuity would be payable from 25th April, 1998 till final payment of G.P.F. and Gratuity dues. Rule accordingly. There shall be no order as to costs.

F. I. REBELLO, J.

P. V. HARDAS, J.

RD.